

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

ROGER VIET,

No. C-09-4175 TEH (PR)

Petitioner,

v.

ORDER TO SHOW CAUSE

M. MARTEL, Warden,

Respondent.

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Petitioner, a state prisoner incarcerated at Mule Creek State Prison in Ione, California, has filed a pro se Petition for a Writ of Habeas Corpus under 28 U.S.C. § 2254 challenging a judgment of conviction from Santa Clara County Superior Court. Doc. #1. Petitioner has paid the \$5.00 filing fee.

I

In May 2007, Petitioner was sentenced to twenty-three years to life in state prison following his convictions for various sex crimes against his daughter. On March 23, 2009, the California Court of Appeal affirmed the judgment in an unpublished opinion.

1 People v. Viet, No. H031704, 2009 WL 738871 (Cal. Ct. App. Mar. 23,  
2 2009). On July 8, 2009, the California Supreme Court denied his  
3 Petition for Review. Id. On September 9, 2009, Petitioner filed  
4 the instant federal Petition for a Writ of Habeas Corpus. Doc. #1.

5  
6 II

7 This Court may entertain a Petition for a Writ of Habeas  
8 Corpus "in behalf of a person in custody pursuant to the judgment of  
9 a State court only on the ground that he is in custody in violation  
10 of the Constitution or laws or treaties of the United States." 28  
11 U.S.C. § 2254(a). It shall "award the writ or issue an order  
12 directing the respondent to show cause why the writ should not be  
13 granted, unless it appears from the application that the applicant  
14 or person detained is not entitled thereto." Id. § 2243.

15 Petitioner seeks federal habeas corpus relief by alleging  
16 various claims, including a denial of his right to due process  
17 because of both jury instruction error and insufficient evidence to  
18 support his convictions. Doc. #1 at 5-6. Liberally construed,  
19 Petitioner's claims appear cognizable under § 2254 and merit an  
20 Answer from Respondent. See Zichko v. Idaho, 247 F.3d 1015, 1020  
21 (9th Cir. 2001) (federal courts must construe pro se petitions for  
22 writs of habeas corpus liberally).

23  
24 III

25 For the foregoing reasons and for good cause shown,

26 1. The Clerk shall serve by certified mail a copy of  
27 this Order and the Petition, and all attachments thereto, on  
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1 Respondent and Respondent's attorney, the Attorney General of the  
2 State of California. The Clerk also shall serve a copy of this  
3 Order on Petitioner.

4           2. Respondent shall file with the Court and serve on  
5 Petitioner, within sixty days of the issuance of this Order, an  
6 Answer conforming in all respects to Rule 5 of the Rules Governing  
7 Section 2254 Cases, showing cause why a Writ of Habeas Corpus should  
8 not be granted. Respondent shall file with the Answer and serve on  
9 Petitioner a copy of all portions of the state trial record that  
10 have been transcribed previously and that are relevant to a  
11 determination of the issues presented by the Petition.

12           If Petitioner wishes to respond to the Answer, he shall do  
13 so by filing a Traverse with the Court and serving it on Respondent  
14 within thirty days of his receipt of the Answer.

15           3. In lieu of an Answer, Respondent may file a Motion to  
16 Dismiss on procedural grounds, as set forth in the Advisory  
17 Committee Notes to Rule 4 of the Rules Governing Section 2254 Cases.  
18 If Respondent files such a motion, Petitioner shall file with the  
19 Court and serve on Respondent an Opposition or Statement of  
20 Non-Opposition within thirty days of receipt of the motion, and  
21 Respondent shall file with the Court and serve on Petitioner a Reply  
22 within fifteen days of receipt of any Opposition.

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1           4.     Petitioner is reminded that all communications with  
2 the Court must be served on Respondent by mailing a true copy of the  
3 document to Respondent's counsel. Petitioner also must keep the  
4 Court and all parties informed of any change of address.

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7           IT IS SO ORDERED.

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9     DATED       10/01/09



THELTON E. HENDERSON  
United States District Judge